
TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #09-194

DEVELOPMENT OF NEW RULES AT [329 IAC 11.7](#) CONCERNING REGISTRATION OF FACILITIES THAT USE INDUSTRIAL OR COMMERCIAL WASTE AS AN ALTERNATIVE FUEL SOURCE**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules at [329 IAC 11.7](#) concerning requiring registration, storage standards, and closure and financial assurance for facilities that use industrial or commercial waste as an alternative fuel source.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking. IDEM also seeks comments on waste types appropriate for this registration and the level of oversight that is appropriate.

CITATIONS AFFECTED: [329 IAC 11-3-1](#); [329 IAC 11-12-2](#); [329 IAC 11-18](#); [329 IAC 11-19](#); [329 IAC 11.7](#).

AUTHORITY: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3-1](#); [IC 13-19-4-10](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

IDEM staff have been contacted regarding burning solid waste streams as a fuel to offset the burning of coal. Under the current solid waste rules, such activity would either have to be regulated as a solid waste incinerator, a solid waste processing facility or granted an exemption from the rules under [329 IAC 11-3-1](#)(15) as a solid waste management activity that does not pose a threat to human health or the environment. None of these options are ideal as they represent at one extreme more regulatory burden than is needed and at the other extreme exemption from regulatory oversight. The purpose of this rulemaking is to develop a more appropriate regulatory tool for this activity that assures that best management practices are being utilized relative to the management of waste prior to burning without imposing needless requirements that would hinder the beneficial use of waste materials as a fuel. The rule would also provide appropriate management practices for ash produced from the burning activity.

This rulemaking focuses on the storage and handling aspects of the waste utilized as fuels and leaves the assessment of emission impacts from such burning to the Office of Air Quality and the Air Pollution Control Board. Along that same theme, IDEM is proposing revisions to the solid waste incinerator rules to recognize that technical evaluation and standards relative to the operation of the incinerators themselves are best dealt with through the appropriate air permits.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Consider changes to the incinerator rules at [329 IAC 11](#). In a new article, a requirement for registration, storage standards, and closure and financial assurance for a facility using up to 30% industrial or commercial waste as an alternative fuel would be required. Adding pertinent definitions to clarify the rules. The facility would be required to build within the effective time period of the initial permit. There could not be speculative accumulation of the industrial and commercial waste, and residential waste could not be used or stored.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law, and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Leaving the rule as it currently stands and not adding this registration.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

There is no federal law that are applicable to these facilities.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative will have a fiscal impact of approximately \$20,000 savings per year for each operation that is registered rather than permitted as a solid waste processing facility. This savings includes the permit fee and any renewals, as well as some other administrative costs required by the permit. There would be costs associated with registration and regulatory requirements where

a solid waste processing facility permit would not be required. IDEM specifically requests comment on the fiscal impact.

Potential Fiscal Impact of Alternative 2. There is no additional fiscal impact other than what is currently imposed under the rule.

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Surface
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 North Senate Avenue
W041
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC50-01 - IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
bbaughn@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lynn West, Rules Development Branch, Office of Legal Counsel, at (317) 232-3593 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.
- (3) The submission of comments on the potential fiscal impact of this rulemaking.

Mailed comments should be addressed to:

#09-194(SWMB) (Alternative Fuel Registrations)
Janet Pittman
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Ave.
MC 65-46
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the IDEM receptionist on duty at the thirteenth floor reception desk,

Rules Development Branch, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5517, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling Janet Pittman, Rules Development Branch at (317) 232-8922.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by April 24, 2009.

Additional information regarding this action may be obtained from Lynn West, Rules Development Branch, Office of Legal Counsel, (317) 232-3593 or (800) 451-6027 (in Indiana).

Nancy King
Branch Chief, Rules Development
Office of Legal Counsel

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